D.B.CIVIL WRIT PETITION NO. 5873/2006
Pappu Ram v. State of Rajasthan & ors.

Date of order : 08.11.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Vishal Sharma for the petitioner

This writ petition has been filed seeking a declaration that deletion of sub-section (5) of section 69 of the Rajasthan Excise Act, 1950 (in short, 'the Act') is null and void. The petitioner seeks similar declaration with respect to proviso to section 9A of the Act. The cause of action for filing writ petition is the order of the Excise Commissioner confiscating the vehicle of the petitioner - a pick-up van bearing registration no. RJ 21 GA 0291. Illicit liquor was recovered from the vehicle which led to the order of confiscation under section 69(4) of the Act. By the order impugned, while passing order of confiscation, the Excise Commissioner gave option to pay fine of Rs. 65,000/- as an alternative to confiscation of the vehicle. In the circumstances, the petitioner seeks direction to reduce the amount of fine from Rs. 65,000/- to Rs. 5,000/- and release the vehicle on furnishing security to the satisfaction of the authority.

The back-ground of the case has been noticed above. It may further be stated to complete the narration of facts that recovery of the

liquor was made from the vehicle in question on 25.7.2006. A criminal case being FIR no. 228/2006 under sections 16/54 of the Excise Act was instituted and the vehicle was seized. However, in view of the provisions of section 69 of the Act confiscation proceeding was initiated with respect to the vehicle in which the Excise Commissioner passed the impugned order referred to above.

The case of the petitioner is that by reason of deletion of sub-section (5) of section 69 the valuable right of appeal has been taken away. The submission is totally misconceived. Sub-section (5) as it stood prior to its deletion vide notification dated 25.5.2005 provided for appeal against an order of confiscation under sub-section (4) within sixty days from the date of communication of the order to the Division Bench of the Revenue Board which could pass such order as it thought fit, confirming, modifying or annulling the order appealed against. The appeal earlier lay to the Divisional Commissioner prior to amendment of 2001 whereby the Division Bench of Revenue Board was substituted as the appellate forum in place of the Divisional Commissioner. As regards case of the petitioner that his valuable right of appeal has been taken away by the 2005 amendment we may observe that right of appeal no doubt is a valuable right but unless there is any right of appeal on the date of commencement of the proceeding, it can not be claimed as a vested

right. The proceeding, as seen above, commenced in the instant case after 25.7.2006 when the vehicle was seized; sub-section (5) of section 69 stood deleted as on that date and therefore, petitioner can not contend that he had any vested right of appeal under section 69(5) of the Act.

As a matter of fact, despite deletion of sub-section (5) of section 69 the petitioner still has right of appeal under section 9A of the Act. Section 9A runs as under :

> "9A. **Appeals and Revision** – (1) An appeal shall lie-
> (a) to the Excise Commissioner from any order passed by an Excise Officer under this Act, and
> (b) to the Division Bench of the Board of Revenue established under the provisions of Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956), from any order passed by the Excise Commissioner under this Act otherwise than on appeal.
> (2) Any appeal under sub-section (1) may be preferred at any time within sixty days from the order complained of.
> (3) The decision of Excise Commissioner or the Division Bench of the Board of Revenue, as the case may be, on such appeal shall, subject to the result of revision, if any, under sub-section (4), be final.
> (4) The Division Bench of the Board of Revenue may revise any order passed on appeal by the Excise Commissioner.
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> Provided that no appeal shall be entertained unless it is accompanied by a satisfactory proof of payment of 75% of the amount of the demand created by the order appealed against.
> (5) Any revision under sub-section (4) may be preferred at any time within thirty days from the date of the order complained of."

On a bare reading it is manifest that appeal lies against any order of the Excise Commissioner to the Board of Revenue under clause (b) of sub-section (1) of section 9A. Whereas under section 69 (5) an appeal could be filed against order of confiscation under sub-section (4), appeal under section 9A can be filed against any order. Thus any order of the Excise Commissioner can be appealed against before the Division Bench of the Board of Revenue. Indeed, where the order is passed by an Excise Officer such appeal would lie to the Excise Commissioner. In that case the person aggrieved has further right of revision under sub-section (4) of section 9A. It appears to us that there being already a right of appeal under section 9A, the legislature thought it appropriate to delete the provision regarding parallel appeal under section 69 (5).

It was submitted that right of appeal under section 9A is illusory inasmuch as the appeal can not be filed unless the appellant deposits 75% of the amount determined by the order appealed against. According to the counsel requirement of prior deposit of 75% of the amount is too onerous to provide an expedient remedy of appeal. The submission has to be rejected out of hand in view of the decisions of the Apex Court. In Anant Mills Co. Ltd. v. State of Gujarat, **(1975) 2 SCC 175**, it was held that the condition as to pre-deposit is made to regulate the exercise of the right of appeal conferred upon a person.

The purpose is that right of appeal may not be abused by any recalcitrant party and there may not be any difficulty in enforcing the order appealed against if ultimately it is dismissed and there may be speedy recovery of the amount of tax due to the Corporation. In Seth Nand Lal v. State of Haryana, **1980 Supp SCC 574** while considering the validity of similar provision regarding pre-deposit before availing right of appeal the Supreme Court observed that right of appeal is a creature of statute and while granting the right the legislature can impose conditions for the exercise of such right. In Vijay Prakash D. Mehta & anr. v. Collector of Customs (Preventives), Bombay, **(1988) 4 SCC 402**, it was held that right of appeal is neither an absolute right nor an ingredient of natural justice. A right of appeal is statutory right which can be circumscribed by conditions.

In fairness to the petitioner we refer to a recent decision in Mardia Chemicals Ltd. & ors. v. Union of India & ors, (**2004) 4 SCC 311** wherein an exception was carved out in cases where a person is required to make prior deposit without determination of the amount due. The Supreme Court observed that before calling upon the person to make prior deposit there must be adjudication by the adjudicating authority at the first instance of the amount due and where there is no such determination of the amount due and the person is still called upon to make prior deposit to maintain his appeal. In the instant case

the competent authority adjudicated the case and assessed the liability of the appellant, we are satisfied that the case is covered by the ratio of the decisions in Anant Mills Co. Ltd. (supra), Seth Nand Lal (supra) and Vijay Prakash D. Mehta (supra). Indeed, determination of the appellant's liability by way of quantification of fine is alternative to confiscation of the vehicle. It is open to the petitioner to pay the fine of Rs. 65,000/- else the vehicle stands confiscated.

In these premises we find no substance in challenge to the vires of deletion of sub-section (5) of section 69 of the Act or proviso to section 9A. Prayer to reduce the amount of find from Rs. 65,000/- to Rs. 5,000/- is equally misconceived inasmuch as this Court while exercising power of judicial review can not sit in appeal and reduce the fine.

We thus find no merit in the writ petition which is accordingly dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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